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Docket 83013/TJS
Customer No. 01333

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of

Dale F. McIntyre

METHOD AND SYSTEM FOR MANAGING IMAGES OVER A COMMUNICATION NETWORK USING USER PROVIDED INSTRUCTIONS

Serial No. 09/892,043

Filed June 26, 2001

Group Art Unit: 2162

Examiner: Jean B. Fleurantin

I hereby certify that this correspondence was sent by facsimile transmission to the United States Patent and Trademark Office on the date set forth below.

Carol J. Murphy

December 21, 2005

Date

Mail Stop APPEAL BRIEF-PATENTS
Commissioner for Patents
P.O. Box 1450
Alexandria, VA. 22313-1450

Sir:

APPEAL BRIEF TRANSMITTAL

Enclosed herewith is Appellants' Appeal Brief for the above-identified application.

The Commissioner is hereby authorized to charge the Appeal Brief filing fee to Eastman Kodak Company Deposit Account 05-0225. A duplicate copy of this letter is enclosed.

Respectfully submitted,

Attorney for Appellants
Registration No. 53,950

Thomas J. Strouse/cjm
Telephone: 585-588-2728
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Enclosures
If the Examiner is unable to reach the Applicant(s) Attorney at the telephone number provided, the Examiner is requested to communicate with Eastman Kodak Company Patent Operations at (585) 477-4656.

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METHOD AND SYSTEM FOR MANAGING IMAGES OVER A COMMUNICATION NETWORK USING USER PROVIDED INSTRUCTIONS

Serial No. 09/892,043

Filed 26 June 2001

Group Art Unit: 2162
Confirmation No. 1730
Examiner: Jean B. Fleurantin

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Carol J. Murphy

December 21, 2005
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Alexandria, VA. 22313-1450

Sir:

APPEAL BRIEF PURSUANT TO 37 C.F.R. 41.37 and 35 U.S.C. 134

Table Of Contents

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APPELLANT'S BRIEF ON APPEAL

Appellants hereby appeal to the Board of Patent Appeals and Interferences from the Examiner's Final Rejection of claims 1-24 which was contained in the Office Action mailed July 22, 2005.

A timely Notice of Appeal was mailed on October 24, 2005.

Real Party In Interest

As indicated above in the caption of the Brief, the Eastman Kodak Company is the real party in interest.

Related Appeals And Interferences

No appeals or interferences are known which will directly affect or be directly affected by or have bearing on the Board's decision in the pending appeal.

Status Of The Claims

Claims 1-24 are pending in the application and were finally rejected.

Appendix I provides a clean, double spaced copy of the claims on appeal.

Status Of Amendments

An initial Office Action was mailed on July 8, 2003. An amendment in response to the Office Action was mailed on October 8, 2003. A final Office Action was mailed on January 13, 2004. A 116 Amendment in response to the Office Action was mailed on March 10, 2004. An Advisory Action was mailed on March 16, 2004. A Request for Continued Examination (RCE) was mailed on March 23, 2004. An Office Action was mailed on May 6, 2004. A response to the Office Action was mailed on August 3, 2004. An Office Action was mailed on January 26, 2005. A response to the Office Action was mailed on April 25, 2005. A final Office Action was mailed on July 22, 2005. A 116 response to the Office Action was mailed on September 22, 2005. A Notice of appeal was mailed on October 24, 2005. The claims stand as indicated in Appendix I.

Summary of Claimed Subject Matter

The Appellant's invention relates to a method and system for providing an automatic service over a communication network with regard to stored instructions on a user computer. In particular, the invention includes automatically initiating the obtaining of instructions stored on a user computer over a communication network by a service provider. *See* at least page 8, lines 25-page 9, line 5; page 13 lines 3-12; page 13, line 27-32; page 14, line 20-page 15, line 5. The instructions that are stored on the user computer are associated with digital media file that is also stored on the user computer. *See* at least page 13, line 27-32. The claim method and system of the present invention further includes the steps of implementing the instructions with respect to the associated digital file that is stored on the user computer. *See* at least page 13, line 27-32.

Grounds of Rejection to be Reviewed on Appeal

The following issue is presented for review by the Board of Patent Appeals and Interferences:

1. Whether the invention of claims 1-24 is unpatentable over Jebens (U.S. Patent No. 6,321,231) in view of Allen (U.S. Patent 5,737,491), Cromer (U.S. Patent No. 6,381,636) and further in view of Narayen (U.S. Patent 6,035,323).

According to the final Office Action, dated July 22, 2005, with respect to claims 1-8, 12-20 and 24, Jebens disclose Appellants invention as claimed. However, according to the final Office Action, Jebens does not explicitly disclose instructions being associated with a digital media file stored on said user computer, and implementing said instructions with respect to the associated digital image file. However, according to the final Office Action, Allen discloses a memory for storing digital images produced by the image sensor in digital image files, the digital image files having associated information for controlling a remote image fulfillment server. Thus, according to the final Office Action, it would have been obvious to one of ordinary skill in the art at the time of the invention to

modify the combined teaching of Jebens and Allen to result in Appellant's claimed invention.

Nevertheless, according to the final Office Action, while Jebens and Allen disclose the claimed subject matter, they fail to disclose an automatic service over a communication network to a user based on stored instructions by a user on a user computer. However, according to the final Office Action, Cromer discloses a server computer system to remotely access asset information stored within a client computer system coupled to the server utilizing a network, in which asset information is stored within each client which includes information identifying software components of a particular client. Therefore, according to the final Office Action, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the combined teaching of Jebens, Allen and Cromer to result in Appellant's claimed invention.

With respect to claims 9-11 and 21-23, according to the final Office Action, Jebens, Allen and Cromer disclose the claimed invention except for a metadata field of the identified digital image file that is modified to reflect data added to the electronic form, wherein the metadata field is provided in the service provider computer an in a user computer. Nevertheless, according to the final Office Action, Narayen discloses that the claimed data object is created for each digital image and is stored in a database. Therefore, according to the final Office Action, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the combined teaching of Jebens, Allen, Cromer and Narayen to result in Appellant's claimed invention.

Arguments

CLAIMS 1-24 ARE PATENTABLE OVER JEBENS IN VIEW OF ALLEN CROMER AND FURTHER IN VIEW OF NARAYEN.

1. CLAIMS 1-24 ARE PATENTABLE OVER JEBENS IN VIEW OF ALLEN AND CROMER BECAUSE JEBENS, ALLEN, CROMER, AND ALONE OR IN COMBINATION, FAIL TO SHOW ALL OF THE ELEMENTS RECITED IN CLAIMS 1-24.

a. JEBENS DOES NOT DISCLOSE, EXPRESSLY OR INHERENTLY, AT LEAST AUTOMATICALLY INITIATING THE OBTAINING OF INSTRUCTIONS STORED ON A USER COMPUTER AS RECITED IN INDEPENDENT CLAIMS 1, 12, 13 AND 24.

According to Appellant's invention as recited in claim 1, 12, 13 and 24, the invention provides an automatic service over a communication network to a user with regard to stored instructions on a user computer. In particular, the invention includes automatically initiating the obtainment of instructions stored on a user computer over a communication network by a service provider. The instructions that are stored on the user computer are associated with digital media file that is also stored on the user computer. The claim method and system of the present invention further includes the steps of implementing the instructions with respect to the associated digital file that is stored on the user computer.

Jebens fails to teach or suggest automatically initiating the obtaining of instructions stored on the user computer over a communications network by a service provider as recited in Appellant's independent claims. Rather, Jebens discloses "permitting a first user to locate and download . . . at least one of the digital images," receiving an electronic file" and "receiving instructions from the first user [at the host] directing that electronic file be delivered to a second user." Col. 2, line 65 - Col. 3, lines 10. For example, Jebens discloses giving permission to an advertising agency 12 to access a database on a host system 10, search the

database on the host system 10 an download low resolution images. Then, the advertising agency 12 requests that the host 10 routes a product including the downloaded images to a publishing entity 16, such as a printer. Col. 5, lines 11-22. It can be clearly seen that it is the first user that initiates a request to the host site 10 whereupon the host site would then, in response, prepare a job order and sends it to the appropriate recipient.

As a second example differentiating Jebens from the present invention, Jebens discloses that a "'work order' refers to the set of data transmitted from a first user [12] to the host system 10 requesting routing to a second user [16]. The work order preferably includes a set of instructions identifying the second user and identifying any files to be sent from the database." Col. 14, lines 11-16. A "'job order' refers to a collection of data assembled . . . by the host system 10 for routing to the second user [16]." Col. 14, lines 26-28. Accordingly, in Jebens, the first user 12 sends the work order to the host system 10. "Upon receiving the work order, the host [system] 10 develops a job order in accordance with the instructions contained in the work order." Col. 14, lines 55-57. The job order is then sent to the second user 16.

The Examiner has cited column 3, lines 5-10 of Jebens of teaching the automatic initiating of obtaining instructions stored on a user computer. However, Appellant would like to point out that the passage to which the Examiner refers to at column 3, lines 5-10 is directed to the situation where instructions are provided by the user 12 that provide instructions for a host 10 for delivering of files to an identified second user such as supplier 16. *See* Col. 21, line 62 – Col. 22, line 42.

With regard to column 18, line 63 to column 19, line 10 of Jebens, this portion of the specification cited by the Examiner is dealing with the submission of images from the image provider 14 to the host site 10. In this situation, it is the image provider computer that initiates the actions required for sending of the images to the host site. In particular see column 18, line 66 to column 19, line 1 which states "The communication portion of the local computer then establishes a connection with the host site 10 or other destination by automatically dialing or sending a network request." As can be clearly seen it is the image provider computer that initiates the communication. In the present invention, it is the

service provider that initiates the action and obtains instructions stored on the local computer. Then, the present invention provides implementing the instructions with regard to the digital image file stored on the local computer. This is not taught or suggested in Jebens. The hot folder system in Jebens is simply a system for allowing the transmission of images from one place to another. Jebens reference does not teach or suggest the automatic obtaining and reading of instructions on the local computer that is initiated by the service provider as taught and claimed by Appellant.

Thus, Jebens does not teach, expressly or inherently, automatically initiating the obtaining of instructions stored on a user computer over said communication network by a service provider. Therefore, Appellant respectfully submits that Appellant's claims are patentable over Jebens.

b. ALLEN DOES NOT DISCLOSE, EXPRESSLY OR INHERENTLY, AT LEAST AUTOMATICALLY INITIATING THE OBTAINING OF INSTRUCTIONS STORED ON A USER COMPUTER AS RECITED IN CLAIMS 1, 12, 13 AND 24.

Allen fails to remedy the deficiencies of Jebens as Allen fails to teach or suggest automatically initiating the obtaining of instructions stored on the user computer over a communications network by a service provider. As admitted by the final Office Action, Allen does not disclose an automatic service over a communication network to a user based on stored instruction by a user on a user computer. Allen merely discloses a camera having memory for storing digital images, the memory having information to control a remote server. Col. 1, lines 1-41. More specifically, a photographer verbally instructs the camera to perform a command such as to transfer images to a fulfillment server. Col. 1 line 66 – Col. 2, line 7; Col. 3, line 49 – Col. 4, line 14. Hence, Allen teaches that the camera (user) initiates a communication.

Thus, neither Jebens nor Allen, alone or in combination, expressly or inherently teach or suggest automatically initiating the obtaining of instructions stored on a user computer over said communication network by a service

provider. Therefore, Appellant respectfully submits that Appellant's claims are patentable over Jebens and Allen.

c. CROMER DOES NOT DISCLOSE, EXPRESSLY OR INHERENTLY, AT LEAST AUTOMATICALLY INITIATING THE OBTAINING OF INSTRUCTIONS STORED ON A USER COMPUTER AS RECITED IN CLAIMS 1, 12, 13 AND 24.

Cromer also fails to remedy the deficiencies of Jebens and Allen, as Cromer fails to teach or suggest automatically initiating the obtaining of instructions stored on the user computer over a communications network by a service provider. Cromer teaches that a server is permitted to remotely access asset information (i.e., information identifying components of the client computer system) from a powered-off client computer via a network adapter included in the client computer. Col. 1, lines 9-17; Col. 2, lines 15-30. However, Cromer does not disclose automatically initiating the obtaining of instructions stored on the user computer.

Thus, neither Jebens, Allen nor Cromer, alone or in combination, expressly or inherently teach or suggest automatically initiating the obtaining of instructions stored on a user computer over said communication network by a service provider. Therefore, Appellant respectfully submits that Appellant's claims are patentable over Jebens, Allen and Cromer.

d. NARAYEN DOES NOT DISCLOSE, EXPRESSLY OR INHERENTLY, AT LEAST AUTOMATICALLY INITIATING THE OBTAINING OF INSTRUCTIONS STORED ON A USER COMPUTER AS RECITED IN CLAIMS 1, 12, 13 AND 24.

Narayen also fails to remedy the deficiencies of Jebens, Allen and Cromer as Narayen fails to teach or suggest automatically initiating the obtaining of instructions stored on the user computer over a communications network by a service provider. Rather, Narayen allows a user on a client computer system 121

to create a media container that contains digital media, and transmits this media container onto the Internet via a server computer 111 for other client computer systems (e.g., 125) to view. That is, after receiving digital media from a client 121, the server computer system 111 generates the viewable pages, such as viewable HTML pages, that are made available to a web server 109 for other client computer systems 125 to view. Col. 7, line 14 – Col. 8, line 59; Col. 16, lines 11-39.

Thus, neither Jebens, Allen, Cromer nor Narayen, alone or in combination, expressly or inherently teach or suggest automatically initiating the obtaining of instructions stored on a user computer over said communication network by a service provider. Therefore, Appellant respectfully submits that Appellant's claims are patentable over Jebens, Allen, Cromer and Narayen.

Conclusion

Therefore, Appellant respectfully submits that independent claims 1, 12, 13 and 24 are patentable over the cited references. Because claims 2-11 and 14-23 depend from claims 1 and 13, respectively, and include the features recited in the independent claim as well as additional features, Appellant respectfully submits that claims 2-11 and 14-23 are also patentably distinct over the cited references.

2. CLAIMS 1-24 ARE PATENTABLE OVER JEBENS, ALLEN, CROMER AND NARAYEN BECAUSE THE REFERENCES ARE NOT PROPERLY COMBINABLE.

Appellant respectfully contends that a *prima facie* case of obviousness has not been established, as described more fully below. To establish a *prima facie* case of obviousness, three basic criteria must be met:

1) There must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings;
2) there must be a reasonable expectation of success; and
3) the prior art reference (or references when combined) must teach or suggest all the claim limitations.

(M.P.E.P. §2142).

Appellant respectfully submits that the cited references do not teach or suggest all the claim limitations as discussed above.

Further, there must be some actual *motivation* to combine the references found in the references themselves, the knowledge of one of ordinary skill in the art or from the nature of the problem to be solved that would suggest the combination. Without a suggestion of the desirability of "the combination," a combination of such references is made in hindsight, and the "range of sources available, however, does not diminish the requirement for actual evidence." *In re Dembiczak*, 50 USPQ2d 1614 (Fed. Cir. 1999). It is a requirement that actual evidence of a suggestion, teaching or motivation to combine prior art references be shown, and that this evidence be "clear and particular." *Id.* Broad conclusory statements regarding the teaching of multiple references, standing alone, are not evidence. *Id.*

For example, it is respectfully submitted that Jebens fails to provide any suggestion to implement or otherwise be combined with a system for transmitting digital images from a digital camera to an image fulfillment server that receives the images and acts in accordance with instructions provided therewith as described in Allen. Moreover, Allen fails to provide any suggestion to implement or otherwise be combined with an image management and delivery system where a host site manages stored images as described in Jebens.

Thus, Appellant respectfully contends that a *prima facie* case of obviousness has not been established as no "clear and particular" evidence of motivation to combine can be identified.

More particularly, the Examiner noted that Jebens "does not . . . disclose said instructions being associated with a digital media file stored on said user computer [and] implementing said instructions with respect to said associated digital image file," as discussed above. The Appellant agrees with the Examiner, and thus, Jebens cannot therefore reasonably be said to automatically initiate the obtaining of instructions stored on a user computer over said communication network by a service provider.

Further, in discussing a combination of Jebens and Allen, the Examiner states that it would have been obvious to "modify the combined teachings of Jebens and Allen with said instructions being associated with a digital media file stored on said user computer; and implementing said instructions with respect to said associated digital image file. Such modification would allow the teachings of Jebens and Allen to improve the accuracy and the reliability of the method and system for managing images over a communication network using user provided instruction, and to provide a choice of different communication relay services." However, the need to "provide a choice of different communication relay services" is what Allen teaches is the benefit of the Allen invention itself, and not a motivation to combine with Jebens, and "a system for managing images over a communication network" is the benefit of the Jebens invention itself, and not a motivation to combine with Allen. The Examiner must show some objective teaching leading to the combination. *In re Fine*, 837 F.2d 1071, 1075, 5 USPQ2d 1596, 1600 (Fed. Cir. 1988). It is respectfully submitted that there is no such objective teaching in at least Jebens that leads "to the combination" of Jebens with Allen, and the Examiner has pieced together aspects purportedly found in the prior art to arrive at the invention through hindsight. As stated by the Federal Circuit:

> "Combining prior art references without evidence of such a suggestion, teaching, or motivation simply **takes the inventor's disclosure as a blueprint for piecing together the prior art to defeat patentability—the essence of hindsight.**"

In re Dembiczak, 50 USPQ2d 1614, (Fed. Cir. 1999) (*citing Interconnect Planning Corp. v. Feil*, 774 F.2d 1132, 1138, 227 USPQ 543, 547 (Fed. Cir. 1985); emphasis added).

As such, there is no basis in the references themselves to motivate a person skilled in the art to combine at least the Jebens reference with the Allen reference.

Further, a similar argument can be made for the alleged combination of Jebens, Allen, Cromer and Narayen. The Examiner states in the final Office Action that it would have been obvious to "modify the combined teachings of Jebens, Allen and Cromer and Narayen to provide a user on a client computer

system to create a media container which contains digital media and publish this media container with its digital media onto the Internet for other computer systems to be able to view the media container with its digital media." However, the need to "create a media container which contains digital media and publish this media container with its digital media onto the Internet for other computer systems to be able to view" is what Narayen teaches is the benefit of the Narayen invention itself, and not a motivation to combine with Jebens, Allen and Cromer.

As such, there is no basis in the references themselves to motivate a person skilled in the art to combine at least the Jebens, Allen and Cromer references with the Narayen reference.

Summary

Therefore, Appellant respectfully submits that independent claims 1, 12, 13 and 24 are patentable over the cited references. Because claims 2-11 and 14-23 depend from claims 1 and 13, respectively, and include the features recited in the independent claim as well as additional features, Appellant respectfully submits that claims 2-11 and 14-23 are also patentably distinct over the cited references.

Conclusion

For the above reasons, Appellants respectfully request that the Board of Patent Appeals and Interferences reverse the rejection by the Examiner and mandate the allowance of Claims.

Respectfully submitted,

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Appendix I - Claims on Appeal

1. A method for providing an automatic service over a communication network to a user based on stored instructions by a user on a user computer, comprising the steps of:

automatically initiating the obtaining of instructions stored on a user computer over said communication network by a service provider, said instructions being associated with a digital media file stored on said user computer; and

implementing said instructions with respect to said associated digital image file.

2. A method according to claim 1 where said instruction comprises instructions relating the sale of rights to use and/or reproduce said image.

3. A method according to claim 1 where said instruction comprises the purchase, use, or sale of an item displayed in said image.

4. A method according to claim 1 wherein said instruction was entered on a form.

5. A method according to claim 4 wherein said form is displayed in association with said image.

6. A method according to claim 4 wherein said form is stored remotely at the service provider.

7. A method according to claim 1 wherein the service provider recognizes that a digital image file has been identified for a service during a routine communication interval.

8. A method according to claim 7 wherein an electronic form is provided to the user by service provider in response to discovering of the identified digital image file.

9. A method according to claim 2 wherein a metadata field of the identified digital image file is modified to reflect the data added to the electronic form.

10. A method according to claim 9 wherein the metadata field is provided in said service provider computer.

11. A method according to claim 9 wherein the metadata field is provided in said user computer.

12. A system for providing an automatic service over a communication network to a user based on stored instructions on a user computer, comprising;

a service provider computer for initiating the automatically obtaining of said instructions stored on said user computer over a communication network, said instructions being associated with a digital media file stored on said user computer, said service provider implementing said instructions with respect to said associated digital image file.

13. A method for providing an automatic service over a communication network to a user based on stored instructions by a user on a user computer, comprising the steps of:

storing instructions on said user computer with respect to an associated digital image file, said digital image file representing an image;

automatically initiating the obtaining of instructions stored on a user computer over said communication network by a service provider; and

implementing said instructions with respect to said associated digital image file.

14. A method according to claim 13 where said instructions comprises instructions relating to the sale of rights to use and/or reproduce said image.

15. A method according to claim 13 wherein said instruction comprises the purchase, use, or sale of an item displayed in said image.

16. A method according to claim 13 wherein said instruction was entered on a form.

17. A method according to claim 16 wherein said form is displayed in association with said image.

18. A method according to claim 16 wherein said form is stored remotely at the service provider.

19. A method according to claim 13 wherein the service provider recognizes that a digital image file has been identified for a service during a routine communication interval.

20. A method according to claim 19 wherein an electronic form is provided to the user by service provider in response to discovering of the identified digital image file.

21. A method according to claim 14 wherein a metadata field of the identified digital image file is modified to reflect the data added to the electronic form.

22. A method according to claim 21 wherein metadata field is provided in said the service provider computer.

23. A method according to claim 21 wherein metadata field is provided in said user computer.

24. A method for providing an automatic service over a communication network to a user based on stored instructions by a user on a user computer, comprising the steps of:

automatically initiating the obtaining of instructions stored on a user computer over said communication network by a service provider, said instructions being associated with a digital media file stored on said user computer, said instruction comprises instructions relating to the sale of rights to use and/or reproduce said image; and

implementing said instructions with respect to said associated digital image file.

Appendix II - Evidence

None

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Appendix III – Related Proceedings

None

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